[ORIGINAL CIVIL JURISDICTION]

THE NATIONAL CITY BANK OF NEW YORK

vs.

HO HONG BANK LIMITED.

[SINGAPORE SUIT No. 247 OF 1931]

Cheque crossed "account payee only"—bona fide receipt of payment—collecting Bank not liable—Bills of Exchange Act, 1882 (45 & 46 Vict. C. 61) S. 82 & Bills of Exchange (Crossed Cheques) Act 1906 (45 & 46 Vict. C. 61 S. 82).

A Cheque drawn on the plaintiffs for $100 payable to T. S. & Co. and crossed and marked "Account payee only" was fraudulently altered by changing the name of the payee and by increasing the amount to $9,000. The forger then paid the cheque to his own credit with the Defendants who lodged it with the plaintiffs for payment which was duly made. The cheque was so ingeniously forged by means of a chemical process that it did not attract the notice of both the defendants and plaintiffs until some forty days afterwards when the fraud was discovered as a result of the words deleted becoming more apparent.

Held, that, as a Bank official could not reasonably be expected to have detected the alteration of the cheque in the state that it was on presentation and to have been put on enquiry, the defendants were not liable.

Action tried before Simpson, J.

The Plaintiffs sought to recover from the Defendants a sum of $8,900 being the difference between the amount of a cheque as originally drawn and the amount of the same cheque as fraudulently altered as money payable by the defendants to the Plaintiffs for money had and received by the defendants for the use of the Plaintiffs or alternatively as damages for negligence. The cheque in question was for $100 drawn by customers of the plaintiff Bank in favour of Tai Seng & Co. and was crossed and marked "account payee only." The cheque was subsequently forged in the following manner:— The Payee's name was obliterated by some chemical or other process and the name of "Khoo Kock Chai" was substituted therefor. The words "one hundred only" were altered into "nine thousand." The figures in the body of the cheque were similarly altered. The forged cheque was endorsed in Chinese characters "Khoo Kock Chai." It was also indorsed by the defendants thus "Payee's account credited" and signed by the defendants' Sub-accountant. The Plaintiffs alleged that the Defendants in receiving payment had no title to receive or to give a discharge for the forged cheque. They further alleged that by endorsing the same as they did the defendants induced them to pay the said cheque which they would not have done in their ordinary course of business. The Defendants demurred to the allegations and pleaded *inter alia* that they received payment of the cheque in good faith and without negligence for a customer.

Williamson, for the Plaintiffs.

Page, for the Defendants.

Cur. Ad. Vult.

SIMPSON, J. This action concerns a cheque dated the 30th July, 1930 drawn by Messrs. Drew & Napier on the Plaintiff Bank for $100 payable to Tai Seng & Co. and crossed "A/c payee only."

The cheque was after issue fraudulently altered so as to appear to be for $9,000 payable to "Khoo Kock Chai." This appears to have been done by the use of some chemical the words "Khoo Kock Chai" being substituted for "Tai Seng & Co." There is also some trace, but much more indistinct, of alterations to the amount both in words and figures, the word "only" appearing very faintly over the former.

After alteration the cheque was paid into the Defendant Bank to the credit of Khoo Kock Chai and was the same day presented by the Defendant Bank to the Plaintiff Bank. How the cheque got into the hands of Khoo Kock Chai or what connection (if any) there was between him and Tai Seng & Co. did not transpire during the hearing. The cheque was treated by both Banks as being in order and it was only on or about the 10th September 1930 that the fraud was discovered. By this time Khoo Kock Chai had withdrawn all the money, except $60, from the Defendant Bank. The question now is which Bank is to bear the loss.

The Defendant Bank claims protection of Section 82 of the Bills of Exchange Act 1882 and of the Bills of Exchange (Crossed Cheques) Act 1906.

In order to come within Section 82 the Defendant Bank must have receiyed payment for a customer of the crossed cheque in good faith and without negligence. The onus of proving the necessary facts to obtain the protection of the

section is upon Defendant Bank (Ordinance No. 53 (Evidence) Sections 103 and 106—*Souchetee, Limited,* v. *County Westminster and Parr's Bank, Limited* 36 T.L.R. 195 Grant's Law of Banking 7th Edn. p. 47).

The Defendants must therefore prove:

(1) that they acted in good faith,

(2) that they acted without negligence, and

(3) that they received payment for a customer.

The Defendants' good faith has not been in any way questioned.

There is no doubt that the Defendants received payment for a customer. Khoo Kock Chai's application to open an account with the Defendants was made on the 25th June 1930, backed by K. G. Chang who was already a customer of the Bank, and there were a few transactions, but for much smaller sums, before the transaction in question. (*Commissioner of Taxation* v. *English Scottish & Australian Bank Ltd.* 1920 A. C. 683).

That the Defendants have a credit account with the plaintiffs which is used for the adjustment of accounts between the two Banks does not appear to me to affect the position, for the Bills of Exchange (Crossed Cheques) Act provides that the fact of a banker crediting his customer's account before receiving payment from the Bank upon which the cheque is drawn will not deprive the collecting Bank of the protection of Section 82. The method by which payment is received later is not of importance. There was nothing in the relation between the Defendants and Khoo Kock Chai to constitute the former holders for value rather than the collecting agents (Byles on Bills 19th Edn. p. 38 *Underwood* v. *Bank of Liverpool* 1924 I K. B. 775).

The question of negligence is much more difficult. The negligence must be in the receipt of payment, not in opening the account, and the test is whether the transaction of paying in any given cheque, coupled with circumstances antecedent and present, was so out of the ordinary course that it ought to have aroused doubts in the minds of the Defendants' officials and caused them to make enquiry. (*Commissioner of Taxation* v. *English Scottish & Australian Bank Ltd.* 1920 A. C. at p. 688).

I do not consider that the amount of the cheque, though much larger than previous sums paid into this particular account, was sufficient to put the Defendants on enquiry, nor do I think that the circumstances connected with opening the account were such as to call for suspicion and particular caution in later dealings with Khoo Kock Chai.

The crossing "Account payee only" requires a higher degree of care from the collecting Bank (*Ladbroke & Co.* v. *Todd* 19 Commercial Cases 256) and it was the duty of the Defendants' officials to ascertain and assure the Plaintiffs that the money was being paid into the account of the payee whose name appeared on the cheque. For this purpose the Defendants endorsed the cheque "Payee's A/c credited" for the information of the Plaintiffs. The facts in *Ladbroke & Co.* v. *Todd* are however distinguishable from those in the present case, for in the former the account was opened *ad hoc* to obtain payment of a cheque crossed "account of payee only" without obtaining any reference or making any enquiry.

The sole point upon which I feel doubt is whether the actual appearance of the cheque was not sufficient in itself to put the Defendants on enquiry. It appears that the words "Tai Seng & Co." were not written exactly opposite the word "Pay" but rather above, and that after total or partial deletion of these words, the name of the new and fraudulent payee, "Khoo Kock Chai," was inserted level with the word "Pay" and under the deleted words. I say total or partial deletion because "Ai Seng" still appears faintly in a brown colour, and it is uncertain whether the words "Tai Seng & Co." had been totally deleted on the 5th August 1930 when paid into the Defendant Bank or were then only partially deleted, as was the case on the 11th September 1930 when Chief Detective Inspector Porter first saw the cheque. His evidence is that part of "Tai Seng & Co." was visible then though more faintly than at the trial, several months later. As therefore the action of the chemical used for deletion is apparently wearing off slightly and the words intended to be deleted are becoming more plain, it is uncertain whether on the 5th August 1930 the deletion was total or partial. It is quite possible that the fraud was

efficiently carried and that the words "Tai Seng & Co." were totally invisible on the 5th August 1930; it is probable that, if the deletion was not complete on that date, the words were still fainter than on the 11th September 1930, and it is reasonably certain that they were not more visible. This however is rather a matter of guesswork as I have not evidence regarding the chemical used and its probable action to guide me.

The question is whether the Defendants' officials, who scrutinised this cheque and whose attention should have been particularly drawn to the name of the payee by the special crossing, should not have detected on the 5th August 1930 that something was wrong with the cheque and so to have had his suspicions aroused. The other alterations in the cheque are, in my opinion, not sufficiently obvious, even now, to lead to suspicion.

It has been argued that, as the Plaintiffs detected nothing until the alteration of the cheque was drawn to their attention later, that therefore it could not be negligence on the part of the Defendants to have missed the suspicious appearance of the cheque, but this argument is not so strong as it would at first appear to be. The Plaintiffs' business was to scrutinize the signature of their own customers, the drawees of the cheque, and also the amount, while the Defendants were more particularly concerned with the payee. Moreover it is possible that the officials of both Banks were careless and the carelessness of the Plaintiffs will not help the Defendants.

That the Defendants have many cheques to deal with in the course of each day's business is no excuse for an inadequate scrutiny of the cheque, as they should keep an adequate and competent staff (*Crumplin* v. *London Joint Stock Bank* 109 L.T. 856).

Inspector Porter has definitely expressed the opinion that, even if he had no particular reason to scrutinise the cheque on the 11th September 1930, he would still have noticed the faint words above the name "Khoo Kock Chai." Ng Loo Beng, employed by the Defendants, whose duty it was to scrutinise the cheque, says that he remembers this particular cheque passing through his hands on the 5th August 1930 and that there was then nothing unusual or suspicious about it, though he admits that there is something suspicious now. Seow Poh Leng, the Defendants' General Manager, says that, if he were to scrutinise the cheque, he would see the marks, but that if he had been the sub-accountant attending to the receiving and clearing of the cheques he would not notice it, because apparently the sub-accountant (Ng Loo Beng) is not supposed to scrutinise the cheques, by which I take it that he means that meticulous examination is not necessary before the cheques are sent to other Banks. B. Baldwin, who examined the cheque for the Plaintiffs on its being sent to them, admits frankly that he does not remember it, that he passed it without noticing the forgery but that he did notice it when he examined it again on the 10th September 1930.

Even now the "Ai Seng" on the cheque is faint and might easily escape notice if one were not carefully and particularly examining the cheque with the knowledge that it had been altered, and these words were fainter on the 11th September 1930 and may have been still fainter, if they appeared at all, on the 5th August 1930, five weeks earlier and just after the cheque had been tampered with. Moreover Bank officials can be expected to be reasonably competent and careful but not to be amateur detectives and with a detective's trained powers of observation (*Slingsby* v. *Westminster Bank* 1931 1 K. B. 173).

Under these circumstances it is difficult to answer the question whether the Defendants have discharged the burden of proving that they acted without negligence in receiving payment on this cheque for their customer. I have little to guide me as to the actual state of the cheque on the 5th August 1930, but in my opinion, after very careful personal scrutiny of the cheque, I do not consider that (as the remains of the original "Tai Seng & Co." were no doubt fainter then than they are now) a Bank official could reasonably be expected to have seen them and to have been thereby put upon inquiry regarding the cheque.

Judgment must therefore be for the Defendants.

Judgment for the Defendants.

Solicitors for the Plaintiffs—

Drew & Napier.

Solicitors for the Defendants—

Allen & Gledhill.